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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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David Holzer

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HEIMLICH LAW  
5952 DIAL WAY  
SAN JOSE, CA 95129

EXAMINER

ENGLAND, DAVID E

ART UNIT

PAPER NUMBER

2443

NOTIFICATION DATE

DELIVERY MODE

06/30/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

alanheimlich@heimlichlaw.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 09/884,741	<b>Applicant(s)</b> HOLZER, DAVID	
	<b>Examiner</b> DAVID E. ENGLAND	<b>Art Unit</b> 2443	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. Claims 1 – 30 are presented for examination.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1, 2, 4, 6 – 9, 13 – 17 and 19 – 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Anderson et al. (6636259) (hereinafter Anderson).**

4. Referencing claim 1, as closely interpreted by the Examiner, Anderson teaches a method of managing a relationship between a device and a service provider comprising:

5. receiving at a service aggregator a first information from the device, the service aggregator having information about one or more service providers and the service aggregator configured to select a specific service provider from the one or more service providers for the device based on the first information, (e.g. col. 2, line 59 – col. 3, line 14 & col. 4, lines 9 – 37 & col. 9, line 25 – col. 10, lines 36, automatic and gateway server 18); and

6. transmitting a second information from the service aggregator to the device directing the device to communicate with the specific service provider, the second information being based on the first information received from the device, wherein the first information is sent automatically

from the device to the service aggregator, (e.g. col. 2, line 59 – col. 3, line 14 & col. 4, lines 9 – 37 & col. 9, line 25 – col. 10, lines 36).

7. Referencing claim 2, as closely interpreted by the Examiner, Anderson teaches comprising the service aggregator communicating information about the device to the specific service provider, (e.g. col. 10, lines 54 – 63).

8. Referencing claim 4, as closely interpreted by the Examiner, Anderson teaches the service aggregator communicating user options to the device, (e.g. col. 10, lines 54 – 63).

9. Referencing claim 6, as closely interpreted by the Examiner, Anderson teaches the first information from the device is input by a user, (e.g. col. 10, lines 54 – 63).

10. Referencing claim 7, as closely interpreted by the Examiner, Anderson teaches receiving from the specific service provider an aggregation of choices for the device, (e.g. col. 10, lines 54 – 63).

11. Referencing claim 8, as closely interpreted by the Examiner, Anderson teaches the choices are displayed on the device and a user may select a specific choice, (e.g. col. 10, lines 54 – 63).

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12. Referencing claim 13, as closely interpreted by the Examiner, Anderson teaches a method of managing a relationship between a device and a service provider, comprising:

13. initially receiving at a service aggregator connected to a network first information from the device when the device is connected to the network, the service aggregator having information about one or more service providers and the service aggregator configured to select a specific service provider from the one or more service providers for the device based on the first information, (e.g. col. 2, line 59 – col. 3, line 14 & col. 4, lines 9 – 37 & col. 9, line 25 – col. 10, lines 36);

14. secondly transmitting a second information from the service aggregator to the device directing the device to communicate with the specific service provider, the second information being based on the first information received from the device, wherein the first information is sent automatically from the device to the service aggregator, (e.g. col. 2, line 59 – col. 3, line 14 & col. 4, lines 9 – 37 & col. 9, line 25 – col. 10, lines 36);

15. determining a new connection event from the device, (e.g. col. 10, lines 38 – 53);

16. sending a new connection message to the device upon said determining said new connection event from said device, (e.g. col. 10, lines 54 – 64);

17. determining and optionally updating the device upon said sending said new connection message to the device, (e.g. col. 10, lines 30 – 37);

18. sending messages to the device upon said determining and optionally updating the device, (e.g. col. 10, lines 38 – 53);

19. receiving user input from the device upon said sending messages to the device, (e.g. col. 10, lines 15 – 29); and

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20. configuring the device upon said receiving user input from the device, (e.g. col. 10, lines 38 – 53).

21. As per claim 9, as closely interpreted by the Examiner, Anderson teaches the choices are account choices, (e.g. col. 10, lines 54 – 63).

22. Referencing claim 14, as closely interpreted by the Examiner, Anderson teaches updating the device comprises updating the device's memory, (e.g. col. 10, lines 38 – 53).

23. Referencing claim 15, as closely interpreted by the Examiner, Anderson teaches determining a service provider, (e.g. col. 10, lines 30 – 37); and

24. transferring to the device communication information about the service provider, (e.g. col. 10, lines 38 – 53).

25. Referencing claim 16, as closely interpreted by the Examiner, Anderson teaches transferring to the device communication information about the service provider further comprises instructing the device to establish a connection with the service provider, (e.g. col. 10, lines 38 – 53).

26. Claim 17 is rejected for similar reasons stated in claim 13.

27. Claims 19 – 28 are rejected for similar reasons stated above.

***Claim Rejections - 35 USC § 103***

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**29. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Morris (6353848).**

30. As per claim 3, Anderson does not specifically teach the service aggregator communicating update information to the device. Morris teaches the service aggregator communicating update information to the device, (e.g. col. 14, lines 12 – 30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Morris with Anderson because it would be more convenient for a system to download the update information that could enable a user to use software that could give a device added features on said device in a network than having the device separately install the software from a portable disk, (i.e. CD ROM).

**31. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Mighdoll et al. (6662218) (hereinafter Mighdoll).**

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32. As per claim 5, as closely interpreted by the Examiner, Anderson does not specifically teach the specific service provider communicating update information to the device. Mighdoll teaches the specific service provider communicating update information to the device, (e.g. col. 16, lines 38 – 56). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Mighdoll with Anderson because of similar reasons stated above.

**33. Claims 10 – 12, 18, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (6636259) in further view of Cook et al. (6697806) (hereinafter Cook).**

34. As per claim 10, as closely interpreted by the Examiner, Anderson teaches the first information received at the service aggregator is selected from the group consisting of device attribute information, account information, type of device information, application information, (e.g. col. 10, lines 54 – 64), branding information, device serial number information, (e.g. col. 7, lines 13 – 20), but does not specifically teach and last time used information.

35. Cook teaches last time used information, (e.g. col. 10, lines 30 – 50). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Cook with Anderson because providing device information to a central location would give the system information to bill the user for services rendered.



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36. As per claim 11, as closely interpreted by the Examiner, Anderson teaches the branding information is hard coded in the device, (e.g. col. 7, lines 13 – 20).

37. As per claim 12, as closely interpreted by the Examiner, Anderson teaches the account information is input by a user, (e.g. col. 7, lines 13 – 20).

38. Claims 18 are rejected for similar reasons as stated above.

39. As per claim 29, as closely interpreted by the Examiner, Anderson does not specifically teach determining a sufficiency of a payment from a payor. Cook teaches determining a sufficiency of a payment from a payor, (e.g. col. 21, lines 11 – 29). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Cook with Anderson because of similar reasons stated above. Furthermore, it would be more beneficial for a system to keep track of services rendered by a service provider and to keep users that are delinquent on payments, out of the system until such payment is received for services rendered.

40. As per claim 30, as closely interpreted by the Examiner, Anderson teaches the payor is selected from the group consisting of a subscriber, a non-subscriber, a sponsor, and an advertiser, (e.g. col. 4, lines 10 – 24).

***Response to Arguments***

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41. Applicant's arguments filed 03/19/2009 have been fully considered but they are not persuasive.

42. **In the Remarks**, Applicant argues in substance that the definitions for “provider” and “aggregator” are different.

43. As to the first argument, Examiner would like to point to previous replies to remarks in other Office actions since it still applies. Furthermore, Applicant is asked to view the newly cited area of the prior art and gateway server 18, for it could also be considered an “aggregator”. Furthermore, when reviewing a reference the applicants should remember that not only the specific teachings of a reference but also reasonable inferences which the artisan would have logically drawn therefrom may be properly evaluated in formulating a rejection. In re Preda, 401 F. 2d 825, 159 USPQ 342 (CCPA 1968) and In re Shepard, 319 F. 2d 194, 138 USPQ 148 (CCPA 1963). Skill in the art is presumed. In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985). Furthermore, artisans must be presumed to know something about the art apart from what the references disclose. In re Jacoby, 309 F. 2d 513, 135 USPQ 317 (CCPA 1962). The conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969). Every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein. In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977).

44. **In the Remarks**, Applicant argues in substance that the Examiner has failed to perform a substantive examination of all claims and that the prior art utilized does not teach the amended claims.

45. As to the second argument, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

46. Applicant still asked to take the thorough look at the prior art of Lynam et al. 6934372 along with the previously send prior art, for they too teach the application.

### *Conclusion*

47. **Applicant is advised to contact the Examiner to resolve any discrepancies on claim interpretations, ambiguities and possible claim amendments to overcome the prior art.**

48. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID E. ENGLAND whose telephone number is (571)272-3912. The examiner can normally be reached on Mon-Thur, 7:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tonia Dollinger can be reached on 571-272-4170. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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